

BOARD OF ZONING APPEALS  
MINUTES  
April 24, 2007

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on April 24, 2007 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

C. BICKLEY FOSTER, DWIGHT GREENLEE, ERMA MARKHAM, STEVEN ANTHIMIDES, JAMES RUANE, JUSTIN GRAHAM and JOSHUA BLICK arrived at 1:43pm.

Board members absent:  
None

City of Wichita staff present:  
HERB SHANER – Office of Central Inspection present.  
SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:  
JESS MCNEELY, Secretary.  
YOLANDA ARBERTHA, Recording Secretary.

FOSTER        We will start the Board of Zoning Appeal meeting at 1:33pm. The first item is to approval of minutes for February 27, 2007. Are there any changes? Do I hear a motion to approve?

MARKHAM    We need approval from someone that was present last time.

GREENLEE    Move to approve minutes

ANTHIMIDES Seconded.

FOSTER        All in favor say aye? All those opposed?

**Motion Carries 6-0**

FOSTER        Our only case today is the variance request to reduce parking requirements from 76 to 48 spaces for the Inter-Faith Villa Courts. Jess are you ready?

McNEELY      Good afternoon Board members, I am Jess McNeely. This request BZA2007-13 is a variance request to reduce the parking from 76 to 48 spaces and also to allow one of those 48 spaces within the front setback. **BACKGROUND:** The applicant plans to redevelop this entire block of N Market street by renovating two existing buildings with apartments and

office space, and building a new multi-family residential building. The Unified Zoning Code (UZH) would require 76 total parking spaces for this development, the applicant intends to provide 48 total spaces (see the attached site plan). Also, the applicant proposes one parking space within the 20-foot front building setback. A variance is required to reduce the parking requirement by more than 10 percent; parking within the setback can be resolved with a variance as well. A mixture of zoning and land uses characterizes the surrounding area. Office, commercial, and multi-family residential uses exist in the immediate area, to include affordable housing developments.

**ADJACENT ZONING AND LAND USE:**

NORTH	“B”	Single-family residential
SOUTH	“B”	Multi-family residential
EAST	“LC”	Restaurant, hotel, office, multi-family residential
WEST	“B”	Multi-family residential

*The five conditions necessary for approval apply to all variances requested.*

**UNIQUENESS:** It is staff’s opinion that this property is unique as the lots were platted prior to the current zoning code (with a 135-foot depth), and the two existing buildings to remain on the site were built in the 1920s, also prior to the current zoning code requirements. The property is unique as a multi-family development in an older, mixed-use neighborhood, where residents can walk to nearby establishments. As an affordable housing project, residents within this development will have a lower automobile ownership rate than what the zoning code parking requirement anticipates.

**ADJACENT PROPERTY:** It is staff’s opinion that granting the requested variance will not adversely affect the rights of adjacent property owners. The residential units that previously occupied the site did not meet the zoning code parking requirements, and surrounding properties were not negatively affected. Improvements on the site, the paved parking and circulation drives, will improve traffic flow and its affect on adjacent property owners. Additionally, on-street spaces are available on Market if overflow parking should be necessary on occasion.

**HARDSHIP:** It is staff’s opinion that the strict application of the zoning regulations would constitute an unnecessary hardship upon the applicant. Compliance with the parking requirements would consume a significant portion of the site, and prohibit the optimal development of this site for multi-family use.

**PUBLIC INTEREST:** It is staff’s opinion that the requested variance would not adversely affect the public interest, as the public has an interest in the development and redevelopment of residential buildings within older, existing neighborhoods.

**SPIRIT AND INTENT:** It is staff’s opinion that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, as the parking requirements of

the zoning regulations are not necessary for this redevelopment, and adequate parking for this development will be provided on site.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to grant the variances exist, the Secretary recommends that a variance to reduce the parking requirement from 76 to 48 spaces for a multi-family residential development, and a variance to permit one parking space within the front building setback, be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan.
2. All parking on the site shall be marked and paved in conformance with City standards.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year from the date the variance is granted unless such time is extended by the Board.
4. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

Are there any questions on this request?

MARKHAM The large two or three story building that is going to be retain, is that going to be the only living unit area or will there be other places where occupancy units?

McNEELY Yes, there will be additional living areas. This building will have housings and there will be another multi story unit with housing unit

MARKHAM Where is it in proximity to this building?

McNEELY If you look at this rectangle here, this space will be parking and if you look in bold this “L” shape building that will be the new building on the site with apartments. The small one story building that will also be retained on the site is here.

MARKHAM That will be used for offices.

McNEELY Yes. There is still a parking requirement with the administrative offices.

MARKHAM You will just have one handicap parking space?

McNEELY I believe they will have more than one handicap parking spaces. There are meeting the code on the parking requirement.

FOSTER Does this have any history? Did you have another case on this property before?

McNEELY      There is not a previous variance on this immediate site. We had a case in the mid-town area a while back.

FOSTER      It was not this site but up the street?

McNEELY      Yes, we had a similar case.

FOSTER      Are there any other questions? We will now here from the agent.

My name is Wayne Isaac. I am the project manager for this development on behalf of Inter-Faith Villa Court and Inter-Faith Ministries. Sam Mison the Executive Director is here. Jess has done a good job. A couple points of clarification; the current building on the south end of the study that building is classified as office but our principle use of that building will be used as a learning center. It is called the enrichment center. It will have computer lab and facilities for training for the tenants of these properties. There will be two small offices for case manager who are the people who will work with our tenants life situation and creating plans for them to move forward and enhance their situation. Those two will be employees of Inter-Faith Ministries and any parking they may need will be accommodate in the block south at Inter-Faith Corporate headquarters. We do not believe there is any parking needed for that building. The building on the north that you asked about has very recently been added to the national register of history places. In keeping that building as well as the building on the south was an accommodation and agreement we made early on in this project with Council Woman, Sharon Feary. She wanted to keep those as keystone for the block. Therefore we design this building around that desire. The building on the north currently has 12 one bedroom apartments. Frankly, it is a slum property. It was originally, in its day, one of the best structures in town. It was five, three bedrooms townhouses with 1600 square feet in each one. Our design calls for restoring two of those back to its original configuration. Even though we think in terms of utility cost and so of that is going to be lost liters for us, we wanted to do that for the integrity of the building. That building will have two, three bedroom units and 6, one bedrooms units in it when we are done. The remaining 32 units will be newly constructed and a facility in bolded pointed out. We have 37 units south of this property. We have 24 units across the street from this property. We feel very confident that 40 parking spaces will be more than adequate for this space. The other two stucco buildings that you saw and the white one are to be moved off-site and restore elsewhere. Unfortunately, we had fire in the white one that destroyed it. Our target population simply does not have the vehicles to require more parking. If you have any questions I will be glad to answer or Sam can.

FOSTER      Mr. Isaac to clarify, we are talking about a total of 40 units?

ISAAC      Correct

FOSTER      This idea of parking, is this what you normally experience?

ISAAC            Again, the building across the street, which has 24 units, has 28 parking places and that parking lot is never full. The building to the south, which has 37 units and has 53 parking spaces it is never full. Last Saturday night, it only had twelve parked vehicles.

FOSTER           This property does not included any overflow area or anything like that?

ISAAC            No, it does not.

FOSTER`          Anyone else? I see you have the Director over the Inter-Faith Ministries.

MISON            I was represented very well by Mr. Isaac's, he said everything I would have said.

FOSTER           Mr. Isaac, you read the conditions and are you in agreement with them?

ISAAC            Yes. Our projected construction time is 300 days. If we have a lot of weather conditions, we may have to come back and ask for an extension. Under normal conditions, we do not have a problem with it at all.

FOSTER           I will talk to Jess about condition number 4 on here. But you are okay with what is here now?

ISAAC            Yes.

FOSTER           The way that it is worded it will not hold staff back from enforcing it?

McNEELY        No, not at all. We had intended to discuss this after the agenda item. The bottom line, when this body approves a variance and a variance resolution is sign that variance become a part of the official zoning map. The conditions of the variance as you have approved them becomes an official part of the zoning code to be enforced by OCI the same as any other item in the zoning code. There is nothing that keeps OCI from enforcing it.

DICKGRAFE      The converse is true that if the BZA for whatever reason decided that they did not after the fact want a condition enforced. You cannot do that. This is not going to prohibit OCI from self initiating a complaint for example if the parking remains unpaved pass the year, or if the parking was never paved OCI is free to go out and enforce the parking ordinance irregardless of this variance.

FOSTER           This is not limited to our operation. If OCI notices something they may go ahead and enforce it.

FOSTER           Do we have a motion for this case.

MARKHAM        I move to approve the variance. I moved that the board accept the finding of facts as set forth in the secretary's report and that all five conditions set out in Section

2.12.590B of the City Code as necessary for the granting of variance has been found to existing and that the variance be granted subject to the conditions set out in the Secretary's report.

GREENLEE Seconded.

FOSTER Let the variance case be approved. I call a question, all in favor say aye?

**MOTION CARRIES 6-0 UNANIMOUSLY**

FOSTER Do we have a report from Herb?

SHANER Yes. Good afternoon, Herb Shaner with Central Inspection. Our first report is the "GC" general commercial property at 946 W 53<sup>rd</sup> Street N and that is where they wanted to have the entire ground floor used for office and display. They are looking pretty good, so that is completed. Then we have the 51<sup>st</sup> street south and East Hydraulic. We have the landscaping of the trees and they all have been planted. The property at 255 Rutan that was putting the Garage in the back; it has been completed. The sign on top of the LearJet facility out west at Tyler and Harry, they were going to paint it on top of the building.

DICKGRAFE Flyover and look at it?

SHANER Yes, It has been painted and completed.

FOSTER We had a question. Mr. Shallenberger, was that his name? On the west side of town near Maize Road, has that sign been torn down?

SHANER Yeah that sign is still up. I do not know where they are at on the court case.

DICKGRAFE I know there is a pending court case that had been filed and been set for trial and continued and then I had not paid any attention after that.

SHANER It is still set for trial.

BLICK How about that property on Silverdale, where he was building a garage? I have got calls on him.

SHANER I will go out to see him on his "SF-5" because you asked for him to side the south side of it.

DICKGRAFE Is that the cinderblock that was not a garage but it was not a house?

SHANER He has not covered it with the siding.

BLICK Okay, but he is not up to his one-year yet.

SHANER Yeah, he has one year to complete improvement

RUANE Did garage doors go on?

SHANER No, there is no garage door. It has a single man door on the west side of the north end of it.

BLICK There is water and sewer.

SHANER Well I do not know because I could not see but I did not see any vent pipes coming out of the roof. Then there was no permits pulled.

BLICK It was suppose to be a storage unit.

DICKGRAFE I wonder when his year is up if you should send him a notice to come back before the board which you can do and get information because you cannot declare the variance void. You can bring him back and ask him why these things have not been completed and at that point either give him more time and or refer him to OCI from an enforcement stand point as far as a court action or notice or those sort of things.

FOSTER Jess what do we have for next month?

McNEELY I expect at least one case to be filed for next month.

FOSTER We do not want to have a meeting for that particular reason only. I just saying if you want somebody to come back, you would not want to have a meeting for that reason only.

DICKGRAFE We will bring him back when we have an agenda.

McNEELY Even though we have wrote that the BZA had the authority to revoke a variance and in our research, we found that State Law does not give the BZA the authority to revoke a variance. When a zone change is approved, it is approved. In this case when a variance is approved, a variance is approved. It is a part of the official zoning map and those conditions are considered a part of the zoning code. So it cannot be revoke, but the conditions of the variance can always be enforced. We did discussed what would the best language for the final condition of the conditional use. I will pass around a copy of what Sharon had suggested. Will you look at the sentence in quotation within that e-mail.

MARKHAM I have a question, do you mean an inspector cannot go in and inspect a structure for sewer and plumbing?

DICKGRAFE If access to the interior of a structure is denied, then you would have to get some kind of a search warrant. You are talking about a home or accessory structure and you may find that someone lives in this structure. But you cannot enter a resident or a home or a building unless it is truly a commercial building without some kind of warrant or court order.

McNEELY Most of the cases that we deal with, at some point will require a building permit. When a person gets a permit, they have to follow through on the inspections of their building permit. We will have a condition that states all permits necessary to construct these improvements are required. The fact is that particular building on Silverdale is a good example for many things we deal with it. They got caught building a structure without a building permit. It was discovered that it was in the setback and that is why it came before the BZA for a variance. The fact they pulled a building permit so they have to get their inspections done on their building. The entire process is not complete until OCI issues what is called a certificate of Occupancy for that building. There are checks in the systems that are reviewed for any building well beyond what a variance will requires or governed. If the property on Silverdale violated the building permit by being a dwelling unit or an accessory apartment of which they do not have appropriate permits for then the OCI inspectors under the zoning and building code will have recourse. OCI are then able to use all of the enforcement strategies they have at their disposal.

RUANE Can OCI get a warrant?

DICKGRAFE Yes. On the basis of good cause, you can request an administrative warrant through the District Court to obtain access to the interior. As I recall, he did not he just had a chain link fence. We would not require any warrant for any exterior.

BLICK What do we have to rehear this case again if he is meeting the setback variance that we granted or are there other conditions or stipulations in that variance that would require him to come back to this board?

McNEELY The conditions that he has not yet met are he has not completed his project within the one year and he has not installed the siding of that variance. If you look at the sentence in quotation "The above conditions are subject to enforcement by any legal means available to the City of Wichita." The fact is, this board does not have the authority to revoke a variance. The conditions of a variance are fully enforceable by the Office of Central Inspection. We made a transit from an old statement that use to say that the BZA can revoke a variance. We took an intern step stating that an applicant could be called back to this board to discuss conditions and recommendations to staff regarding enforcement. We do not see this board as wanting to instruct OCI on the enforcement of these cases. That brings me back to perhaps, we would not want to bring property owners back to rehear conditions when OCI can enforce just as they enforce all other ordinances.

FOSTER If OCI goes out and enforces something they have the opportunity to appeal it and who would they appeal to.

DICKGRAFE The District Court.

McNEELY Or it can be appeal to this body if it is an interpretation to the zoning code or sign code.



DICKGRAFE You would not have an interpretation of the zoning code. You would have did I or did I not violate this provision of the zoning code, which is the variance. That is going to be an legal interpretation of a criminal statute or ordinance that process would be that they are entitle to a trial at municipal court if they are not happy with that resolution. They can appeal that case to district court. If that individual still does not bring that building into compliance or the activities into compliance the City can file civil remedies such as an injunction or a seize an assist order or those kind of things to physically remove the structure if they are not in compliance with the zoning code. I do not see under any scenario that this board would have the authority to come back and rehear an interpretation unless there some issue on the actual language of the conditions and I think you are going to have a by-laws problem where you can not rehear the same case without a change of facts. I think it would be difficult to get a case reheard.

McNEELY I could see a case coming back if there is a separate variance on the same property that would change their conditions on that property. There are very few situations where that could happen.

FOSTER What do the members say to using the statement provide by Sharon? Or do you want to retain the one that you already form?

MARKHAM I think the one written by Sharon has broader coverage.

BLICK Are you going to agree with it?

DICKGRAFE I am going to agree with it because I wrote it. It covers and does what it supposed to while giving other legal remedies.

MARKHAM Moved

ANTHIMEDES Seconded

FOSTER Any discussions? All in favor say aye.

**MOTION CARRIES 6-0 UNANIMOUSLY**

McNEELY Would you still like for Herb to report on compliance to with this board?

DICKGRAFE Herb would you like to hang out with us?

MARKHAM I think I would like to have Herb because he can tells us about it because he been that to inspect.

FOSTER The board has always wanted things enforced. Any other discussions?

McNEELY      There will be a training session on May 23, 2007 that you will received from the planning in conjunction with APA educational seminars. Feel free to come to it. APA has some fundamental training for BZA boards.

FOSTER      They pass the rule where they required professionals to retain at lease 32 hours of training or after 4 years you are out. Those training courses may be able to be rented.

MARKHAM    Is there any means of my being able to check out some of the training materials?

McNEELY      The training we get are a audio conference done live so there is not film that can be check out. We can look into similar training materials that are on a CD/ROM or DVD.

FOSTER      Is there any thing else? Do I hear a motion to adjourned?

GREENLEE    Moved

RUANE      Seconded

FOSTER      All in favor say aye.

ADJOURMENT 2:35 PM